

FILED

May 24 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 09-0688

IN THE SUPREME COURT OF THE STATE OF MONTANA

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IN RE THE RULES OF PROFESSIONAL
CONDUCT

ORDER

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

The State Bar of Montana Board of Trustees has petitioned this Court to revise portions of the Montana Rules of Professional Conduct to provide guidance regarding lawyers' use of technology. The proposed revisions affect the Preamble, Rule 1.0 on Terminology defining "writing," Rule 1.6 on Confidentiality, and Rule 4.4 on Respect for Rights of Third Persons.

The proposed revisions are shown below, with language to be added underlined and language to be stricken interlineated.

Proposed new language in Preamble:

(5) In all professional functions a lawyer should be competent, prompt and diligent. Competence implies an obligation to keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

Proposed amendment to subsection (p) of Rule 1.0, Terminology:

(p) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and email electronic communications. A "signed" writing includes the electronic equivalent of a signature, such as an electronic sound, symbol or process, which is attached to a writing and executed or adopted by a person with the intent to sign the writing.

Add the following new subsection (c) to Rule 1.6, Confidentiality:

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Amendments to Rule 4.4 Respect for Rights of Third Persons:

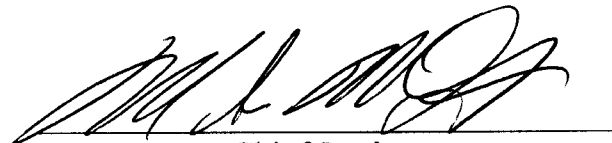
(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

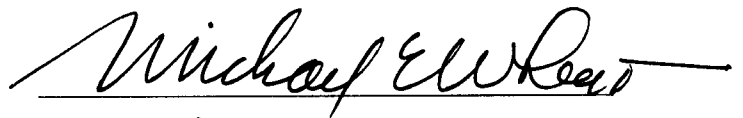
IT IS ORDERED that the Court will accept public comments on the above proposed revisions to the Montana Rules of Professional Conduct for a period of 90 days following the date of the Order. Comments must be filed in writing with the Clerk of this Court.

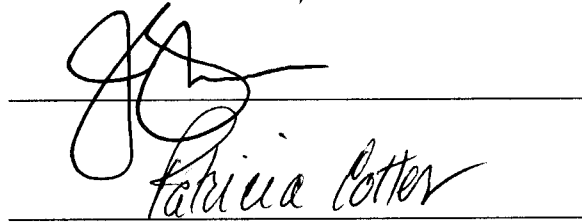
IT IS FURTHER ORDERED that this Order shall be published on the Montana Supreme Court website and that notice of this Order shall be posted on the website of the State Bar of Montana and in the next available issue of the *Montana Lawyer*.

The Clerk is directed to provide copies of this Order to the Montana State Law Library and the State Bar of Montana.

Dated this 24th day of May, 2016.


Chief Justice




Patricia Potter

John B. ...
James H. ...
John B. ...
Justices